IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12030 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI VASUDEV RAJGOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12030 of 1994

MR AJ SHASTRI for Petitioner No. 1

MR HD DAVE AGP for Respondent No. 1-3

NOTICE SERVED for Respondent No. 4-9

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 13/12/2004

ORAL JUDGEMENT

#. The petitioner purchased agricultural land bearing Block No.23 situated at village Tajpura, Taluka Halol, Dist, Panchmahals admeasuring 2 acres and 12 gunthas under the registered sale deed from the present respondent Nos.4 to 8-original owner of the land by a sale deed dated 27.6.1980 (Annexure-A). Thereafter, he applied for mutation in the revenue record in respect of the said land. Mutation entry was certified on 5.4.1981 by Talati-cum-Mantri (Annexure-B) with shero that neither there was a note regarding new tenure land nor patta issued to the said land. Thus, since June, 1980 the petitioner was in possession of the said agricultural land and continued to develop and nourish the same for years together. However, after a period of almost 12 years, the petitioner was served with two show cause notices dated 28.1.1992 and 30.7.1992 by the Assistant Collector, Godhra, Prant Godhra calling upon him to show cause as to why the said land should not be forfeited to the Government because it was a new tenure land. Notices were issued to the original owners as well. They have appeared before the Assistant Collector in response to the notices and stated that they had already sold the land before 10 to 11 years to the petitioner and since then he was in possession of the land in question. They have also stated that before selling the land to the petitioner they had not obtained any prior permission from the competent authority. However, they have denied that it was a new tenure land and there was no such proof regarding the same. It was their ancestors' property and Samatsinh had sold the land of his share to the petitioner.

#. After hearing the parties, the Assistant Collector had observed in his impugned order dated 28.9.92 (Annexure-C) that the purchaser and seller both have admitted about the said transaction without prior permission of the competent authority and that they have not produced any evidence to the effect that the said land was not a new tenure land. They had not filed even objections at the time of promulgation of the record. Hence, till it is proved that it was not a new tenure land, the presumption has to be raised that it is a new tenure land because Amalgamation Scheme coming into force and Entry No.73 was already made on 11.11.1957, which shows that it was a new tenure land, therefore, before selling the land, permission was necessary. Accordingly, he ordered the land to be forfeited to the Government.

#. Aggrieved by the aforesaid order dated 28.9.1992

(Annexure-C) passed by the Assistant Collector, the petitioner had approached the Collector by way of Revision Application No.18/92 raising almost same contentions, which were raised before the Assistant Collector in respect of his case. However, the Collector, Panchmahals at Godhra by his order dated 31.3.1993 (Annexure-D) dismissed the said revision application by confirming the order passed by the Assistant Collector.

#. The aforesaid orders at Annexures "C" and "D" passed by the Assistant Collector and Collector respectively were challenged by the petitioner before the State Government by way of Revision Application, but the same was also dismissed on 13.12.1993 (Annexure-E). Hence, this petition.

#. Learned counsel Mr.Shastri for the petitioner submitted that all the three authorities below committed serious error in proceeding on the assumption that it is a new tenure land. He submitted that the Department should have come with clear case that it was a new tenure land, but in the instant case, all the three authorities wrongly threw the burden on the petitioner to prove that it was of a new tenure land. Thus, the entire approach of the authorities was wrong and illegal. He submitted that he had purchased the land way back in June, 1980 i.e. more than 24 years from today under bona fide impression that it was not a new tenure land and having purchased it under the registered sale deed in June, 1980, he applied for mutation and accordingly the entry was also certified by the competent authority in 1991 with the shero that there was no entry regarding new tenure land nor any patta was issued to the said land. Mr.Shastri submitted that the petitioner had developed and nourished the said land for a period of almost 12 years and all of a sudden he received two notices from the Assistant Collector in 1992 calling upon him to show cause as to why his land should not be forfeited to the Government only on the ground that it was a new tenure land, which was sold without prior permission. He submitted that though there is no period of limitation in exercising the powers, it is time and again held by the Hon'ble Supreme Court as well as this court in umpteen number of cases that such powers should be exercised by the authority within a reasonable period and on the facts and circumstances of this case, it can never be said that period of 12 years was a reasonable one. He, therefore, submitted that on this ground alone the impugned orders passed by the authorities below are required to be quashed and set aside. He submitted that this specific

contention regarding exercise of the powers after a period of 12 years was specifically raised before the State Government, but it was simply brushed aside by the Deputy Secretary in his impugned order at "Annexure-E" on the ground that when the entry was illegal, then no period of limitation would apply.

As against this, learned AGP, Mr.Dave for the respondent Nos.1 to 3 submitted that from the record of the case it is clear that it is a new tenure land, which could not have been sold without the prior permission of the competent authority and at least the original owners of the land were knowing that it was a new tenure land and in spite of that they have sold it, therefore, though the mutation entry was made in the year 1981, it was always open to the competent authority i.e. the Assistant Collector to take up the matter in exercise of his suo motu powers at any point of time and forfeit the land once he is satisfied that it was a new tenure land, which was sold without prior permission of the competent authority. Mr.Dave submitted that the impugned entry "Annexure-B" was void ab initio, therefore, the authority was fully justified in exercising its jurisdiction to cancel the same and forfeit the land to the Government even after a period of 12 years of execution of the sale deed.

#. Having heard learned counsel for the parties at great length and having carefully gone through the impugned orders at Annexures "C", "D" and "E" passed by the authorities below, it is clear that in the instant case, burden was wrongly shifted to the petitioners to prove that it was not a new tenure land. If the authorities had come out with a case that it is a new tenure land, then at the first instance, they must come to that conclusion that it was a new tenure land, which was sold without prior permission. That apart, admittedly, there was a gross delay of 12 years in taking the matter in suo motu powers by the concerned authority. It is true that no period of limitation is prescribed for exercising such powers, but when no period of limitation is prescribed, then it is always desirable that it should be exercised within a reasonable time. The same depends on the facts of each case. Admittedly, there is no malafide intention on the part of the petitioner while purchasing the said land in 1980 and on peculiar facts and circumstances of the case, I am of the considered opinion that there was a gross delay on the part of the authorities in exercising their powers after 12 years. It may be stated that though all the three authorities below concurrently found against the petitioner and ordered forfeiture of the land

in favour of the Government, the learned Single Judge of this court, way back on 20.10.1994 straightaway admitted the petition by issuing Rule and granted interim relief in terms of para 14(B) of the petition, whereby, the implementation of the impugned orders at Annexures "C", "D" and "E" passed by the authorities below were stayed. The interim order operative in favour of the petitioner till today. It is to be stated that though the other side is served long back no reply affidavit is filed to this affidavit.

#. Thus, from the above, it is clear that after purchasing land in June, 1980, the petitioner has been continuously remained in possession. By now a period of more than 24-1/2 years has lapsed. During this period he nourished and developed the land, therefore, it would not be proper in the interest of justice to sustain the orders of forfeiture of land to the Government passed by the authorities below. In case of Brij Lal vs. Board of Revenue reported in AIR 1994 SC 1128 the Hon'ble Supreme Court held that the allottee cannot be dispossessed from the land which he had nourished over a period of two decades, otherwise it would be travesty of justice. In case of Brij Lal (supra) he was allotted land in 1970 on temporary basis. In 1974 he applied for permanent allotment, but his application was rejected on the ground that he was minor, therefore, allotment made in his favour was cancelled only on that ground. On facts of that case, the Hon'ble Supreme Court held that the appellant was in cultivating possession of the land since 1970, therefore, it would be a travesty of justice to dispossess him from the land which he had nourished for a period of two and half decades. In the instant case, the petitioner has nourished the land for a period of almost two and half decades.

#. In view of the above discussion, this petition is allowed and the impugned orders at Annexures "C", "D" and "E" passed by the authorities below are hereby quashed and set aside. Rule is made absolute. Interim relief stands vacated. However, no order as to costs.

(B.J.Shethna, J.)

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